IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 96 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

SARABHAI FOUNDATION

Appearance:

1. INCOME TAX REFERENCE No. 96 of 1991

MR AKIL KURESHI with MR MANISH R BHATT for Petitioner No. 1

MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal, Ahmedabad Bench `B' has referred the following two questions under section 256 (2) of the Income Tax Act, 1961 for the opinion of this Court at the instance of the revenue:-

(i) Whether the Tribunal has not erred in law and on facts in holding that the ITO was not justified in invoking the provisions of sec. 13 (2)(h) of the I.T. Act, 1961 ?

(ii) Whether, the Tribunal has not erred in law and on facts in allowing the exemption u/s.11 of the I.T. Act, 1961 to the assessee ?

2. The case of the Department was that by virtue of provisions of sec. 13 (2)(h) of the Act, the assessee was not entitled to exemption under section 11 of the Act. In appeal, the CIT (Appeals) held that section 13 (2)h) was not attracted and the Tribunal confirmed the appellate order.

3. We have heard Mr. Akil Kureshi learned counsel for the revenue and Mr RK Patel for the assessee.

4. Our attention is invited to the decision of this Court in the case of CIT vs. Insaniat Trust reported in 173 ITR 248 wherein identical question was dealt with by this Court. The said decision was followed by this Court in the case of CIT vs. Ambalal Sarabhai Trust No.30 in decision dated 5th March, 1998 in Income Tax Reference No.301 of 1985.

5. It is common ground between both the sides that the issue raised in the questions is concluded by the aforesaid decisions of this Court.

6. Following the said decision, the questions referred to us are answered in the affirmative i.e. in favour of the assessee and against the revenue.

7. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-